

# **North Smithfield Zoning Board of Review**

**March 8, 2011**

**Kendall Dean School**

**83 Green St., Slatersville, RI**

**The Chair called the meeting to order at 7:00 pm.**

## **1. Roll Call**

**Present: Chair Stephen Kearns, Steven Scarpelli, Bill Juhr, Guy Denizard, Mario DiNunzio, Paul Pasquariello, and Scott Martin. Also present were Building Official Bob Benoit and Assistant Town Solicitor Bill Savastano.**

**2. Disclosure of no compensation or pension credits received by the board members.**

## **3. Approval of Minutes—January 25, 2011**

**Mr. Scarpelli made a motion to approve the minutes of January 25, 2011. Mr. Denizard seconded the motion, with all in favor.**

**4. Approval of the written decision for the application of Gerard and Christine Berthelette, requesting a dimensional variance, per section 5.5.1, Frontage Requirements. Locus is Mendon Road & Middle Street, Plat 3, Lot 286. Zoning: RU-20, Urban Residential.**

**Mr. Scarpelli made a motion to approve the written decision for the application of Gerard and Christine Berthelette, granting a dimensional variance for frontage requirements. Mr. Denizard seconded the motion. Roll call vote was as follows: YES: Stephen Kearns, Steven Scarpelli, Bill Juh, Guy Denizard, Paul Pasquariello. Motion passed with a vote of 5-0.**

#### **5. Selection of a representative from the Zoning Board of Review to the Ordinance Development Committee.**

**Mr. Scarpelli nominated Mr. Juh to represent the Zoning Board on the Ordinance Development Committee. Mr. Denizard seconded the motion, with all in favor. Mr. Juh informed the Board that the committee is a reorganization of the Ordinance Review Committee, on which he had served. Mr. Juh said that this new committee will have Town Council input. The Town Council will have a representative on the committee and set the agenda for each meeting. He will continue to update the Zoning Board on the work of the ODC.**

#### **6. Discussion of the Open Meetings Ordinance as it relates to group e-mails.**

**The Board discussed whether group emails and “replying to all” on emails violates open meetings laws. Mr. Savastano said that the Board should be careful not to discuss anything that has impact on**

decisions to be made by the Board. Specifically, the Board discussed an email that was sent out stating that nominations would be sought for a representative on the Ordinance Development Committee. The Chair asked if it would be a violation of open meetings if someone replied with their interest in serving on the committee. The Board discussed that making a statement but not asking for an answer or discussion on the statement could be the safest way to handle group emails. Mr. Savastano suggested asking someone from the Attorney General's office to present a workshop to the Board in order to answer all these questions. Though there is a website and a manual for reference on the Open Meetings Act, a representative would be able to cite recent case law and answer individual questions. The Board also discussed that such a workshop would be beneficial to all town boards. The Chair said he would follow up by contacting the Attorney General's office and the Town Administrator.

## **7. Continued discussion: Writing the Decisions of the Zoning Board.**

The Chair stated that after the Board's discussion at the January 25 meeting, he talked to Mr. Benoit about how decisions were developed in the past. Past boards would have someone take notes during the testimony and make a list of findings of fact. The Board would take a recess after the public hearing was closed and that member would get the motion written down. There is a template that was given to the Chair that outlines how to formulate the written decision. The clerk would then be given a copy of the motion and the findings of fact and

would prepare the written decision from the motion and findings of fact as read into the record at the meeting. The Chair stated that this template would be helpful in organizing testimony and findings of fact. Mr. Jühr stated that a former member of the Board (Mr. Halliwell) was good at writing the decisions in this way but he is unsure this board has the experience in order to do this and produce a legally defensible decision. Mr. Jühr stated that he would like legal input on decisions (have the decisions reviewed by counsel) so that they would be more likely to stand up in court if appealed.

The Chair went on to say that at the last meeting, Mr. Savastano had informed the Board that his role is defined by the Town Solicitor. Mr. Savastano stated that according to the Town Charter, the Town Solicitor dictates and authorizes his duties. He said he had suggested at the January meeting that the Board contact Town Solicitor Rick Nadeau, and that Mr. Nadeau is waiting for a call. The Chair said he would follow up by calling Mr. Nadeau. Mr. Savastano stated that he does not just work for the Zoning Board in his role as Assistant Solicitor. He is very busy with the Police Department, court appearances, traffic court, and juvenile court. He said that his position, as defined in the Town Charter, is not full-time. Mr. Jühr said that the Board should consult the solicitor and the Town Council about the role of the Assistant Solicitor, as he believes that decisions should be reviewed by an attorney and legal counsel should be involved in writing the decisions. He added that North Smithfield is the only town of those that were represented at the workshop he

attended that does not have an attorney prepare the decisions. Mr. DiNunzio stated that there is a difference between drafting and creating the decision and reviewing it. Mr. Jühr said it would be helpful to have legal counsel review the wording to see if it would hold up in court.

Mr. Savastano said that he does not have time to take on additional duties, since his job of Assistant Solicitor is not full-time. Mr. Jühr said that maybe he could get paid more to do the decisions. Mr. Savastano stated that he is not getting paid to attend the Zoning Board meetings. The Chair said that he has looked over the state handbook and there is no requirement or mention of legal counsel writing decisions. He said that other towns that hired attorneys to do their decisions did so because of bad experiences with appeals. The Chair stated that in the past, other than when Mr. Rossi was Assistant Solicitor, legal counsel was not involved in writing Zoning Board decisions. He asked Mr. Savastano if he would be able to review the decisions of the Board after someone else prepared them. Mr. Savastano stated that legal counsel from other towns get paid hourly. He said they also don't have all the responsibilities that Mr. Savastano has and that he has time constraints. He enjoys the work he does with the police department and following up on zoning violations. He said he has had success in winning cases that have been pending for years (Perrault and Desper were mentioned). He said more work would affect his private practice. Mr. Jühr stated that it sounds like Mr. Savastano has no interest in working on the Zoning

Board decisions. He then restated this to ask if Mr. Savastano is interested in having input on the decisions written by the Board. Mr. Savastano told him to talk to the solicitor. He said he is not trying to be confrontational, but that it is an added burden and the solicitor dictates his responsibilities. The Chair stated that the Board does not deny that Mr. Savastano is busy, but they want to be sure that they don't misstep and cause problems for the Town because there was no legal review. He said he will talk to Mr. Nadeau. Mr. Denizard said that the Town Council should also be involved. He said that he is concerned because applicants come in with attorneys and he thinks the Board should have an attorney on their side. The Chair said he would follow up on this issue and report back to the Board at the next meeting. Mr. DiNunzio asked if there is any provision that would allow the Board to farm out legal work. Mr. Savastano said that Mr. Nadeau would have to answer that. Mr. DiNunzio added that the Town Council should perhaps consider hiring a permanent full-time solicitor.

Mr. Scarpelli made a motion to adjourn at 7:42 pm. Mr. Denizard seconded the motion, with all in favor.